

## §2.311

## 10 CFR Ch. I (1–1–09 Edition)

waste at a geologic repository operations area must be conducted under the procedures of subparts G and J of this part. Subsequent amendments to a construction authorization for a high-level radioactive geologic repository, and amendments to a license to receive and possess high level radioactive waste at a high level waste geologic repository may be conducted under the procedures of subpart L of this part, unless all parties agree and jointly request that the proceeding be conducted under the procedures of subpart N of this part.

(g) Proceedings on an application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes or pursuant to a license condition shall be conducted under the procedures of subpart M of this part, unless the Commission determines otherwise in a case-specific order.

(h) Except as determined through the application of paragraphs (b) through (g) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter, and proceedings on an application for the direct or indirect transfer of control of an NRC license may be conducted under the procedures of subpart N of this part if—

(1) The hearing itself is expected to take no more than two (2) days to complete; or

(2) All parties to the proceeding agree that it should be conducted under the procedures of subpart N of this part.

(i) In design certification rulemaking proceedings under part 52 of this chapter, any informal hearing held under §52.51 of this chapter must be conducted under the procedures of subpart O of this part.

(j) Proceedings on a Commission finding under 10 CFR 52.103(c) and (g) shall be conducted in accordance with the procedures designated by the Commission in each proceeding.

(k) In proceedings where the Commission grants a petition filed under §2.335(b), the Commission may, in its discretion, conduct a hearing under the

procedures of subpart O of this part to assist the Commission in developing a record on the matters raised in the petition.

[69 FR 2236, Jan. 14, 2004, as amended at 72 FR 49475, Aug. 28, 2007]

### **§2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.**

(a) An order of the presiding officer, or if a presiding officer has not been designated, of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under §2.318(a), may be appealed to the Commission with respect to:

(1) A request for hearing;

(2) A petition to intervene; or

(3) A request for access to sensitive unclassified non-safeguards information (SUNSI), including, but not limited to, proprietary, confidential commercial, and security-related information, and Safeguards Information (SGI). An appeal to the Commission may also be taken from an order of an officer designated to rule on information access issues.

(b) These appeals must be made as specified by the provisions of this section, within ten (10) days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within ten (10) days after service of the appeal. The supporting brief and any answer must conform to the requirements of §2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

(c) An order denying a petition to intervene, and/or request for hearing, or a request for access to the information described in paragraph (a) of this section, is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

(d) An order granting a petition to intervene, and/or request for hearing, or granting a request for access to the

information described in paragraph (a) of this section, is appealable by a party other than the requestor/petitioner on the question as to:

(1) Whether the request for hearing or petition to intervene should have been wholly denied; or

(2) Whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

(e) An order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in §2.310. The appeal must be filed with the Commission no later than ten (10) days after issuance of the order selecting a hearing procedure.

[73 FR 12631, Mar. 10, 2008]

#### **§2.312 Notice of hearing.**

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) A statement describing the specific hearing procedures or subpart that will be used for the hearing.

(b) The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding and the public interest.

#### **§2.313 Designation of presiding officer, disqualification, unavailability, and substitution.**

(a) Designation of presiding officer. The Commission may provide in the

notice of hearing that one or more members of the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall be the presiding officer. The Commission alone shall designate the presiding officer in a hearing conducted under subpart O. If the Commission does not designate the presiding officer for a hearing under subparts G, J, K, L, M, or N of this part, then the Chief Administrative Judge shall issue an order designating:

(1) An Atomic Safety and Licensing Board appointed under Section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law judge appointed pursuant to 5 U.S.C. 3105, for a hearing conducted under subparts G, J, K, L, or N of this part; or

(2) An Atomic Safety and Licensing Board, an administrative law judge, or an administrative judge for a hearing conducted under subpart M of this part.

(b) Disqualification. (1) If a designated presiding officer or a designated member of an Atomic Safety and Licensing Board believes that he or she is disqualified to preside or to participate as a board member in the hearing, he or she shall withdraw by notice on the record and shall notify the Commission or the Chief Administrative Judge, as appropriate, of the withdrawal.

(2) If a party believes that a presiding officer or a designated member of an Atomic Safety and Licensing Board should be disqualified, the party may move that the presiding officer or the Licensing Board member disqualify himself or herself. The motion must be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the Licensing Board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(c) Unavailability. If a presiding officer or a designated member of an Atomic Safety and Licensing Board becomes unavailable during the course of a hearing, the Commission or the Chief